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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/789,606	02/27/2004	Anthony Malone	12013/50501	9058
23838	7590	09/27/2007		
KENYON & KENYON LLP 1500 K STREET N.W. SUITE 700 WASHINGTON, DC 20005			EXAMINER SELLMAN, CACHET I	
			ART UNIT 1762	PAPER NUMBER
			MAIL DATE 09/27/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/789,606	Applicant(s) MALONE, ANTHONY	
	Examiner Cachet I. Sellman	Art Unit 1762	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date: _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>2/27/2004, 7/13/2005, 7/26/2005</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 14 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 14 recites the limitation "at least one of the laser " in line 1. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1-2, 4, 8-13, 15-16, 20-21 and 23 are rejected under 35 U.S.C. 102(e) as being anticipated by Talton (US 2006/0051522 A1).

Talton teaches a method for applying a thin coating to surfaces of a substrate such as biomedical devices, which improve surface interactions in gaseous, liquid or biological environments [0003]. The devices are coated using a pulsed laser, where a target

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material is ablated using a laser to form an ablated target particulate material and the particulate material is directed towards the substrate using a gas flow to coat the substrate surface (abstract and 0047). The target material can include active materials such as biologically active coatings i.e. antigens, nucleic acids, proteins or pharmaceuticals [0035-36, 0047 and 0060] as required by **claims 1, 15 and 23**. The target can comprise a target solution of the polymer and drug dissolved in a solvent [0047] as required by **claims 2 and 16**. Talton teaches freezing the target and mounting on a refrigerated rotating assembly [0051] as required by **claims 4**. The solvent is removed by pumping from the evaporation chamber through the exhaust duct [0048] as required by **claims 8 and 20**. The drug and polymer is transported to the target using a gas flow [0044] as required by **claim 9**. The gas is an inert gas [0041] as required by **claim 10**. The device being coated can be a stent [0058] as required by **claims 11 and 21**. The can be a UV laser and is pulsed [0056] as required by **claims 12-13**.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

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1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

7. Claims 3, 5-7 and 17-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Talton as applied to claims 1 and 15 above in further view of Shalaby et al. (US 2003/019964 A1).

The teachings of Talton as applied to claims 1 and 15 are as stated above.

Talton fails to teach mixing the polymer and drug solution as required by claims 5 and 17. However, it was well known in the art at the time the invention was made to mix the polymer and drug as well as filter the solution as shown by Shalaby et al. Shalaby et al. teaches a process for coating stents with a drug polymer solution. The drug and polymer solution is mixed to insure there is a uniform mixture and coating applied to the medical device as well as filtered to insure that no unmixed drug is left in the solution. It is well known to use a stirrer or sonicator when mixing to make sure there is complete mixing.

8. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Talton as applied to claim 1 in further view of Mori (JP 10074985).

Talton fails to teach using second laser to ablate a second target so the second target is applied to the medical device as required by **claim 14**. However, Talton teaches that different combinations of polymers and drugs and compositions can be applied to the medical device.

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Mori teaches tht different targets can be ablated or vaporized by using a laser with a mirror so different targets can be disposed onto a substrate oppositely. Mori teaches that a plume of the target is formed and is deposited onto the substrate. It would have been obvious to one having ordinary skill in the art to modify the process of Talton to include the use of a mirror in laser device in order to dispose another target in order to customize the medical device depending on its intended use especially since Talton teaches the use of multiple drug/polymer compositions.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cachet I. Sellman whose telephone number is 571-272-0691. The examiner can normally be reached on Monday through Friday, 7:00 - 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Timothy Meeks can be reached on 571-272-1423. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Cachet I Sellman
Examiner
Art Unit 1762

cis

/William Phillip Fletcher III/
Primary Examiner